No. 90-40

In The

Supreme Court of the United States

October Term, 1989

PATRICIA C. FOSTER and BRENT FOSTER,

Petitioners,

vs.

MICHAEL STEIN and HAYAT STEIN,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Florida

RESPONDENTS' BRIEF IN OPPOSITION

CYNTHIA L. GREENE*
LAW OFFICES OF
GREENE & MARKS, P.A.
100 North Biscayne Boulevard
Suite 1100
Miami, Florida 33132
(305) 372-3737

MELVYN B. FRUMKES
LAW OFFICES OF
MELVYN B. FRUMKES &
ASSOCIATES, P.A.
100 North Biscayne Boulevard
Suite 1607
Miami, Florida 33132
(305) 371-5600
Counsel for Respondents

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTIONS PRESENTED[1]

1. Whether the Petitioners raised and preserved a federal or constitutional question when neither the pleadings at the trial court level nor the questions presented to the District Court of Appeal of Florida, Third District, mentioned a federal question or a constitutional issue?

2. Whether the decision rendered by the Supreme Court of Florida was grounded upon state law having no relationship to any federal or constitutional question?

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[1] The Respondents wish to state the Questions Presented differently from those which have been presented by the Petitioners.

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PATRICIA C. FOSTER and BRENT FOSTER,

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vs.

MICHAEL STEIN and HAYAT STEIN,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Florida

RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW

The Respondents agree with the Petitioners' summary of the opinions below.

JURISDICTION

The Petitioners improvidently and erroneously attempt to invoke the jurisdiction of this Court.

The failure of the Petitioners to raise and preserve the now alleged federal and constitutional questions in

the Florida courts preclude the Petitioners from seeking relief before this Court; there is no jurisdiction in this Court.

STATEMENT OF THE CASE[2]

The Respondent, Michael Stein, is the natural father of Andrew Hyde Stein, a minor child born in 1987. The Petitioner, Patricia Foster, is the natural mother.[3] The child was conceived through artificial insemination under the term of a "Surrogate Parenting Agreement" entered into between the Michael Stein and Patricia Foster in 1986.

When Patricia Foster became pregnant in late 1986, Michael Stein filed a "Petition for Declaratory Relief" in the Circuit Court in and for Dade County, Florida, seeking an adjudication of his paternity of the then unborn child carried by Patricia Foster. (App. 1-3)

Patricia Foster responded, in the Florida court, with a "Verified Answer" in which she, under oath, admitted that Michael Stein was the father of the unborn child she was carrying. Brent Foster joined in the "Verified Answer", filed in Florida acknowledging that Michael Stein was the father of the child. (App. 4-5)

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[2] The Respondents believe that the following Statement of the Case is necessary to correct inaccuracies and omissions in the Petitioners' Statement.

[3] Brent Foster, also Petitioner herein, is Patricia Foster's husband. Hayat Stein, also Respondent herein, is Michael Stein's wife.

The paternity case filed by Michael Stein in Dade County Florida, was assigned to the Honorable Edward N. Moore, a Circuit Judge of the Circuit Court of Dade County, Florida. At the time, however, the Chief Judge of the Dade County Courts had entered a series of "Administrative Orders" authorizing County Judges to hear and determine certain cases within the Family Division of the Circuit Court.[4] Therefore, pursuant to "Administrative Order", County Judge Edward Swanko, as Acting Circuit Judge, was assigned to this case and, on December 19, 1986, entered an "Agreed Order Regarding Paternity", declaring Michael Stein the father of the child then carried by Patricia Foster.[5] (App. 6-7)

Following the birth of the child in March, 1987, Patricia Foster executed a "Consent for Adoption", consenting to the adoption of the child by Hayat Stein, the wife of Michael Stein. (App. 10) Michael Stein also executed a "Consent for Adoption", agreeing to the stepparent adoption of the child by his wife. (App. 11-12) Simultaneously,

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[4] Pursuant to Rule 2.050, Florida Rules of Judicial Administration, the chief judge of each judicial circuit within the state of Florida has the authority to appoint County Judges to serve as Acting Circuit Judges for specified periods of time to perform specified services. The authority of the Chief Judge of Dade County, Florida to appoint County Judges as was done in this case was never challenged in the instant case nor is it challenged now.

[5] Subsequently, in January, 1987, an additional order determining Michael Stein's paternity of the child was entered in the State of Michigan. This second paternity adjudication, entitled, "Consent Order Determining Paternity", was entered upon the motion to Patricia Foster. (App. 8-9)

Michael Stein filed a "Petition for [Step-Parent] Adoption" in the Florida Court, attaching thereto the "Agreed Order Regarding Paternity" which established him as the father of the child, and the "Consents for Adoption" executed by Patricia Foster and himself. (App. 13-15)

In May, 1987, the Florida court, again through Acting Circuit Judge Swanko pursuant to "Administrative Order", entered a "Final Judgment of Adoption", authorizing the step-parent adoption of the child by Hayat Stein. (App. 16-17)

One and a half years after the entry of the "Agreed Order Regarding Paternity" and eleven months after the entry of the "Final Judgment of Adoption", Patricia Foster filed, in the Florida court, a "Verified Motion for Relief from Judgment" seeking an order setting aside both judgments. (App. 18-28) She alleged:

1. That although the "Consent for Adoption" executed by her reflects that she signed the consent before a notary and two witnesses, she did not do so;

2. That despite the filing of her "Verified Answer" acknowledging paternity and her sworn "Consent for Adoption", she had never been served with process in connection with the proceedings for paternity or adoption;

3. That the child was never within the territorial jurisdiction of the State of Florida at the time of the adoption and was not born at the time of the paternity adjudication;

4. That she was not represented by independent counsel in the proceedings; and,

5. That County Judge Swanko did not have jurisdiction to enter either the paternity judgment or the adoption judgment as an Acting Circuit Judge because of an alleged "defect" in his assignment under the terms of the "Administrative Order" in effect at the time.

As is clear from the foregoing, the only issues raised by Patricia Foster at the trial court level concerning "jurisdiction" were that she was not served with process; that the child was not within the State of Florida at the time of the adoption; and that County Judge Swanko lacked "jurisdiction" to hear a Circuit Court case because of an alleged "defective" assignment of the case to him. (App. 18-28)

More importantly, Patricia Foster, in her "Motion for Relief from Judgment", made no mention of any federal issue or question and made no mention of or reference to the Constitution of the United States or any federal statute or law.

Patricia Foster, having filed her "Motion for Relief from Judgment", then scheduled and noticed the hearing to be had thereon. She, through her counsel, scheduled the case for hearing; selected the amount of time for the hearing; selected the date and advised counsel for Michael Stein, via a "Notice of Hearing", of the hearing to be had upon her "Verified Motion for Relief from Judgment." (App. 29-30; 31-32) Pursuant to the "Notice of Hearing", the matter to be heard by the court was the "Motion for Relief from Judgment" – not any particular or specific portion of the motion but, rather, the entire motion and all of the allegations made therein.

At the hearing upon her "Motion for Relief from Judgment", however, Patricia Foster presented no evidence with respect to any of the allegations in her motions. She presented no testimony. She did not appear at the hearing nor did any witnesses on her behalf. Instead, she relied solely upon her legal argument, presented through her counsel, that the County Judge, as Acting Circuit Judge, lacked the authority to enter either the paternity or the adoption judgment because of the purported "defect" in his assignment to the case. She did not present any other argument in support of her motion and she did not address any other aspect of the "Motion for Relief from Judgment."

In June, 1988, the trial court denied her "Motion for Relief from Judgment" and Patricia Foster sought review in the District Court of Appeal of Florida, Third District.

In the appellate court, Patricia Foster argued only that the Acting Circuit Judge had been improperly assigned to the case and, therefore, lacked "jurisdiction" to hear the case and that she was entitled to an "evidentiary" hearing upon her allegations of "fraud". Again, as at the trial level, she made no mention of any federal issue or question and made no mention of or reference to the Constitution of the United States or any federal statute or law.

The District Court of Appeal found that the Acting Circuit Judge had been "improperly assigned" to the case and held that because he had "never been appropriately assigned to the cause as an acting circuit judge", he lacked jurisdiction to enter the two judgments in issue.

Following the appellate court ruling, Michael Stein sought review in the Florida Supreme Court.

The Florida Supreme Court accepted jurisdiction to review the case and the issues presented to the Court were:

1. "The District Court of Appeal erred in determining that the County Judge who executed the order and judgment herein was not 'appropriately assigned.' ";

2. "Assuming that the County Judge herein was not 'appropriately assigned', the District Court of Appeal nevertheless erred in determining the order and judgment executed by the County Judge to be 'void.' "

Thus, the questions presented to the Florida Supreme Court were, simply stated, whether there was a "defect" in the assignment procedure whereby the County Judge heard this case as an Acting Circuit Judge and, assuming such a "defect", whether the Acting Circuit Judge was nevertheless a *de facto* judge whose acts were valid.

Although the foregoing were the issues presented to the Florida Supreme Court, Patricia Foster attempted to raise in her responsive brief, for the first time before any Florida court, a "constitutional question", arguing, that the appellate court's decision should be affirmed because the trial court's order denying her "Motion for Relief from Judgment" violated her "Fourteenth Amendment rights" because the trial court applied Florida law instead of Michigan law.

The Florida Supreme Court did not address this issue but, rather, grounded its decision upon Florida law concerning the power and authority of a *de facto* judge. The Florida Supreme Court held:

> Even assuming that [the County Judge] had not been assigned specifically to the instant case, we find the district court's voiding of his orders unwarranted. [The Chief Judge's] order validly made [the County Judge] an acting circuit judge with the power to hear any case properly in the circuit court and within the scope of the administrative orders. Under those orders [the County Judge] "was in peaceful position, discharging his official duties in view of the public, with public acquiescence, and without the slightest appearance of a usurper." State ex. rel. Hawthorne v. Wiseheart, 158 Fla. 267, 273, 28 So.2d 589, 593 (1946). It appears that [the County Judge] was, at the very least, a *de facto* circuit judge.
>
> * * *
>
> We hold, therefore, that [the County Judge] was a *de facto* judge. A *de facto* judge's acts are valid. *Card* [*v. State* 497 So.2d 1169 (Fla. 1986)] An objection to a *de facto* judge's authority to serve must be timely made. At the latest this should be before the final judgment is entered in the action. Because [Patricia Foster] did not object in a timely manner, [the County Judge's] orders should not be vacated on the grounds that he lacked capacity to act as a circuit judge. *Stein v. Foster,* 557 So.2d 861 (Fla. 1980).

Patricia Foster now seeks review in this Court, alleging that the decision of the Florida Supreme Court raises issues of "federal due process."

REASONS FOR DENYING THE WRIT

1. Failure to Raise and Preserve a Federal or Constitutional Question Below

Neither the pleadings at the trial court level nor Petitioners' argument at the district court of appeal level contain any reference to a federal question or a constitutional issue.

Jurisdiction in this Court requires the record below to demonstrate that the constitutional question was both raised and decided by the Florida courts. *Godchaux Co. v. Estopinal*, 251 U.S. 179, 181 (1919); *Beck v. Washington*, 369 U.S. 541, 550-54 (1962).

The procedural history of this case in one of total and complete failure on the part of the Petitioners to preserve the numerous issues which they seek to present to this Court at any judicial level in the State of Florida.

The Petitioners commenced this case at the Florida trial court level by way of a "Motion for Relief from Judgment" alleging "fraud", lack of independent representation by counsel and certain "jurisdictional" grounds – lack of service upon the Petitioners, absence of the child from the state at the time of the adoption and a "defect" in the assignment of the judge who ultimately heard the case.

The Petitioners then scheduled a hearing upon the "Motion for Relief from Judgment" and elected not to present to the trial court any matter other than the purported "defect" in the assignment of the judge assigned to the case. The Petitioners chose not to argue or present any evidence or testimony concerning the allegations of

"fraud" or lack of independent counsel or service of process or the absence of the child from state at the time of the adoption.[6]

More importantly, however, the Petitioners never presented a federal question or constitutional issue to the trial court. To do so, the Petitioners were required to make reference to a particular clause of the United States Constitution or particular statute as well as to the rights claimed thereunder. A mere reference to the "Constitution of the United States" or to the "Constitution and laws of the United States" or "due process of law" is not sufficient. Indeed, a mere reference to a specific amendment to the United States Constitution is insufficient. *See, e.g., Herndon v. Georgia*, 295 U.S. 441, 442-43 (1935); *Oxley Stave Co. v. Butler County*, 166 U.S. 648 (1897); *Bowe v. Scott*, 233 U.S. 658, 664-65 (1914); *Chapin v. Fye*, 179 U.S.

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[6] The Petitioners' failure to present these arguments may have been a tactical decision as the allegations were insufficient, as a matter of law, to support a request for relief from judgment under Florida law. At the time in question, there was no residency requirement associated with adoption cases. *See*, §63.185, Florida Statutes (1987). Service of process is not required where a party voluntarily submits to the jurisdiction of the court by, as here, filing a "Verified Answer" in the paternity case and a "Consent for Adoption" in the adoption case. *See, e.g., Kirshner v. Shernow*, 367 So.2d 713 (Fla. 3rd DCA 1987). Lack of independent counsel does not provide grounds from relief from judgment. *See, e.g., Bubenik v. Bubenik*, 392 So.2d 943 (Fla. 3rd DCA 1980). And, any alleged defect in the consent for adoption or objection thereto is waived after the expiration of thirty days from the entry of the judgment of adoption. *See*, §63.182, Florida Statutes (1987).

127, 129-30 (1900); *Winous Point Shooting Club v. Caspersen*, 193 U.S. 189 (1904).

Here, the Petitioners made no mention, reference or statement as to any federal question or constitutional issue at the Florida trial court level and, even assuming that the Petitioners' vague references to "jurisdiction" were to somehow be deemed to have raised such a question or issue, the Petitioners' waived any such question or issue by their failure to present such points to the trial court at the hearing upon their "Motion for Relief from Judgment."

Assuming that a federal question or constitutional issue had been framed in this case (which it was not), it is essential to this Court's jurisdiction that it have been raised, presented and pursued in a timely and proper manner at the appropriate point in the state court. *Godchaux Co. v. Estopinal*, 251 U.S. 179, 181 (1919); *Beck v. Washington*, 369 U.S. 541, 550-54 (1962). Under Florida law, the appropriate point was at the trial court level as constitutional issues may not be raised for the first time on appeal. *See, e.g., Atwood v. Hendrix*, 439 So.2d 973 (Fla. 1st DCA 1983); *Hunter v. Employers Mutual Liability Insurance Company of Wisconsin*, 427 So.2d 199 (Fla. 2nd DCA 1983); *Sparta State Bank v. Page*, 477 So.2d 3 (Fla. 5th DCA 1985); *Hegeman-Harris Company, Inc. v. All State Pipe Supply Company*, 400 So.2d 1245 (Fla. 5th DCA 1981).

The trial court denied the "Motion for Relief from Judgment" and the Petitioners sought review of the case in the District Court of Appeal of Florida, Third District. Again, the Petitioners did not raise or present to the

appellate court any federal question or constitutional issue and the appellate court decided the case solely upon the basis of the purported "defect" in the assignment of the judge to the case below.

The case proceeded to the Florida Supreme Court at which point the Petitioners, in contravention of Florida law, attempted to raise, for the first time, a "constitutional issue" by asserting, in their responsive brief, that "the decision of the District Court of Appeal should be approved because the entry of the 'Final Judgment of Adoption' contravenes Foster's Fourteenth Amendment rights of due process, where the lower court applied Florida law instead of Michigan law, even though all of the pertinent acts occurred in Michigan." The Petitioners' now assert to this Court that this statement, made for the first time in these proceedings at the Florida Supreme Court level, was sufficient to raise and preserve a federal question for review by this Court.

The flaws in the Petitioners' argument are obvious: the foregoing statement does not adequately frame a federal or constitutional question and, even assuming that it does, this Court's jurisdiction is dependent upon such question being raised at the appropriate time under state law which, under Florida law, is not the Supreme Court level but, rather, the trial court level.[7]

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[7] The Petitioners' argument that Florida law permits litigants to raise issues of due process for the first time at the Supreme Court level is erroneous. The case cited by the Petitioners for this statement, *D'Oleo-Valdez v. State*, 531 So.2d 1347 (Fla. 1988), does not so hold but, rather, opines that fundamental error amounting to a denial of due process may be raised

(Continued on following page)

Further, the Petitioners attempt to raise the "constitutional question" was made for the first time in their *responsive* brief in the Florida Supreme Court. The Petitioners here were not the moving parties in the Florida Supreme Court but, rather, were defending the decision of the district court of appeal. They did not file a cross-appeal. Florida law is clear that the Petitioners cannot claim to have "raised" a "constitutional issue" by inserting such an "issue" in a defensive brief. *State v. Rogers*, 15 FLW D1426 (Fla. 4th DCA, June 1, 1990).

Here, the record is abundantly clear that the Petitioners never properly framed or raised a federal or constitutional question in the Florida courts and, as such, this Court should deny the Writ.

2. The Decision of the Florida Supreme Court is Grounded Upon Independent and Adequate State Grounds

The decision of the Florida Supreme Court herein is based upon state grounds that are independent and free of any federal question or constitutional issue and adequate to support the decision.

(Continued from previous page)

for the first time at the *appellate* level. D'Oleo-Valdez raised his due process argument at the district court of appeal level, not for the first time at the Supreme Court level. *D'Oleo-Valdez v. State*, 516 So.2d 1125 (Fla. 3rd DCA 1987). This distinction is crucial because, in Florida, the district courts of appeal constitute the courts of last resort except in limited circumstances. Rule 9.030, Florida Rules of Appellate Procedure, Committee Note, 1980 Amendment.

The decision of the Florida Supreme Court was that a judge who functions under color of authority is a de facto judge whose judicial acts are valid irrespective of whether his actual authority suffers from some procedural defect. No federal or constitutional issue or question was involved in this decision.[8] As such, this Court should not grant certiorari herein. *See, e.g., Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931).

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[8] Proof of the fact that the Florida Supreme Court decided this case solely under Florida law and that the Petitioners failed to present or preserve a federal or constitutional question, is the Florida court's statement, in its opinion, "the *only* argument presented at the trial court level was the defect in the assignment of [the Acting Circuit Judge]. We therefore choose to limit this opinion to the *de facto* judge issue . . . " (Emphasis supplied).

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Dated: July 31, 1990

Respectfully submitted,

CYNTHIA L. GREENE
LAW OFFICES OF
GREENE & MARKS, P.A.
100 North Biscayne Boulevard
Suite 1100
Miami, Florida 33132
(305) 372-3737

MELVYN B. FRUMKES
LAW OFFICES OF
MELVYN B. FRUMKES &
ASSOCIATES, P.A.
100 North Biscayne Boulevard
Suite 1607
Miami, Florida 33132
(305) 371-5600

Counsel for Respondents

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

MICHAEL STEIN Petitioner and PATRICIA (CLARK) FOSTER and BRENT FOSTER her husband Respondents.	FAMILY DIVISION Case No. PETITION FOR DECLARATORY RELIEF RELEVANT TO ADOPTION AND FOR SUPPLEMENTAL RELIEF FLA. BAR # 151623

This is a Petition for Declaratory Relief pursuant to F.S. Chapter 86 et seq. and for Supplemental Relief, the petitioner, MICHAEL STEIN, through his undersigned attorney stating as follow:

1. Statutory authority for this petition is F.S. Chapter 86 et seq.

2. The right and legal status to be determined is whether MICHAEL STEIN is the natural and biological father of a child presently being carried by the respondent, PATRICIA (CLARK) FOSTER, the natural and biological mother of this unborn child.

3. Respondent, PATRICIA (CLARK) FOSTER, is and was at all times prior to conception of the subject child married to her husband, BRENT FOSTER.

4. MICHAEL STEIN alleges that he is the father of this unborn child conceived through artificial insemination with the sperm that he donated for this purpose.

5. The insemination was done without the prior written consent of BRENT FOSTER.

6. There is a justiciable controversy under the law, MICHAEL STEIN, claiming that he is the natural and biological father of the unborn child, even though this child was conceived during the marriage of PATRICIA (CLARK) FOSTER to BRENT FOSTER, her husband.

WHEREFORE, the petitioner prays for the following:

a) That he be found to be the natural and biological father of the subject child presently being carried by PATRICIA (CLARK) FOSTER.

b) That this Court retain jurisdiction of the parties and the subject matter, allowing in further proceedings amendment of this petition to include the request of HAYAT STEIN, the wife of MICHAEL STEIN, for adoption of the subject infant as the supplemental relief as permitted by F.S. Chapter 63 et seq.

c) For each other relief as this Court deems just.

LAW OFFICES OF ALLAN S. KESSLER
Attorney for Petitioner
The Roney Plaza
2301 Collins Avenue
Miami Beach, Florida 33139
Telephone: (305) 538-4421

/s/ Alan S. Kessler
Alan S. Kessler

BEFORE ME, the undersigned authority, personally appeared MICHAEL STEIN, who, after being duly sworn, deposes and says that all of the foregoing information is true and correct to the best of his information and belief.

/s/ Michael Stein
MICHAEL STEIN

SWORN TO AND SUBSCRIBED before me this 4th day of Aug 1986.

/s/ Suzan Shell Onnill
NOTARY PUBLIC

My Commission Expires: 1/21/87

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

MICHAEL STEIN	:	FAMILY DIVISION
Petitioner	:	
and	:	Case No.
PATRICIA (CLARK) FOSTER and BRENT FOSTER her husband	:	VERIFIED ANSWER
	:	FLA. BAR # 151623
Respondents.	:	

Respondents, PATRICIA (CLARK) FOSTER and BRENT FOSTER, her husband, make this their Verified Answer to the Petition for Declaratory Relief filed by the petitioner, MICHAEL STEIN in this matter and state:

1. We have read the petition and admit all of its allegations as being true and correct.

2. PATRICIA (CLARK) FOSTER stating affirmatively:

a) I am carrying a child conceived through artificial insemination with the sperm of MICHAEL STEIN; I refrained from having sexual intercourse with my husband during the period before the insemination as instructed by my physician.

b) MICHAEL STEIN is the natural and biological father of the unborn child I am carrying.

c) My husband, BRENT FOSTER, is not the father of this child.

FURTHER AFFIANT SAYETH NAUGHT. PATRICIA (CLARK) FOSTER.

1. BRENT FOSTER stating affirmatively:

a) I am not the biological father or the unborn child presently being carried by my wife PATRICIA (CLARK) FOSTER, the biological mother of this child.

b) I did not consent in writing to the artificial insemination of my wife with the sperm of MICHAEL STEIN.

c) MICHAEL STEIN is the natural and biological father of the unborn child presently being carried by my wife, PATRICIA (CLARK) FOSTER.

FURTHER AFFIANT SAYETH NAUGHT. BRENT FOSTER.

/s/ Patricia (Clark) Foster
Patricia (Clark) Foster

/s/ Brent D. Foster
Brent Foster

SWORN TO AND SUBSCRIBED before me this 11 day of August, 1986.

/s/ Kathleen A. Butler
NOTARY PUBLIC

My Commission Expires: March 5 1990

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

MICHAEL STEIN Petitioner and PATRICIA (CLARK) FOSTER and BRENT FOSTER her husband Respondents.	:	FAMILY DIVISION Case No. 86-42848 FC (16) AGREED ORDER REGARDING PATERNITY

THIS CAUSE having come before me upon the Petition of the petitioner, MICHAEL STEIN, for Declaratory Relief (Paternity) and for Supplemental Relief, and the Court having examined the verified petition and the verified answer filed by the respondents, and there being no dispute as shown by the petition and the verified answer as to who is the father of the unborn child presently being carried by PATRICIA (CLARK) FOSTER, to wit, MICHAEL STEIN, it is hereby

FOUND AND ORDERED:

1. That MICHAEL STEIN is found to be the natural and biological father of the unborn child presently being carried by PATRICIA (CLARK) FOSTER.

2. That BRENT FOSTER is found not to be the natural and biological father of the unborn child presently being carried by PATRICIA (CLARK) FOSTER.

3. That BRENT FOSTER did not consent in writing to the artificial insemination of his wife, PATRICIA

(CLARK) FOSTER, with the sperm donated by MICHAEL STEIN.

4. That upon the birth of the unborn child presently being carried by PATRICIA (CLARK) FOSTER all birth records shall reflect that the father of this child is MICHAEL STEIN and all hospitals and Bureaus of Vital Statistics are ordered to comply with the findings of the Court.

5. That the motion to amend the petition is granted adding HAYAT STEIN, the wife of MICHAEL STEIN, as co-petitioner, and is further amended to allow the filing of a Petition for Adoption on her behalf as the supplemental relief prayed for in the Petition for Declaratory Relief.

6. This Court retains jurisdiction over the subject matter and the parties.

DONE AND ORDERED in Chambers at Cutler Ridge, Dade County, Florida, this 19 day of December, 1986.

/s/ Edward Swanko
ACTING CIRCUIT
COURT JUDGE

Copies furnished to the parties

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND

PATRICIA FOSTER,

Plaintiff,

-vs-

C.A. NO. 87
324862 DP

MICHAEL L. STEIN,

Defendant.

_____/

Herbert A. Brail (P 33722)
Attorney for Plaintiff
930 Mason
Dearborn, MI 48124
(313) 278-8775

_____/

CONSENT ORDER DETERMINING PATERNITY

At a session of said Court held in the Courthouse in OAKLAND COUNTY and STATE OF MICHIGAN on JAN 14 1987

PRESENT: HONORABLE JESSICA R. COOPER
CIRCUIT COURT
JUDGE

This matter having come before the court on the Complaint of PATRICIA FOSTER, Plaintiff, and the Court having examined said Complaint and the Answer of Defendant, MICHAEL L. STEIN, and there being no dispute shown by the Complaint and Answer as to the paternity of the unborn child or children presently being carried by PATRICIA FOSTER;

IT IS HEREBY ORDERED AND ADJUDGED, that MICHAEL L. STEIN, is found to be the natural and

biological father of the unborn child presently being carried by PATRICIA FOSTER;

IT IS FURTHER ORDERED AND ADJUDGED that BRENT FOSTER, husband of PATRICIA FOSTER, Plaintiff herein, is found not to be the natural and biological father of the unborn child or children presently being carried by PATRICIA FOSTER;

IT IS FURTHER ORDERED AND ADJUDGED that upon birth of the unborn child or children presently being carried by PATRICIA FOSTER, that all birth records shall reflect that the father of the child is MICHAEL L. STEIN and that all hospital and Michigan Department of Health, Bureau of Vital Statistics or records are hereby ordered to comply with the findings of this Court.

/s/ Illegible
CIRCUIT COURT
JUDGE

APPROVED AS TO FORM AND CONTENT:

/s/ Patricia Foster
PATRICIA FOSTER
Plaintiff

/s/ Herbert A. Brail
Herbert A. Brail
Attorney for Plaintiff

/s/ Michael L. Stein
MICHAEL L. STEIN
Defendant
In Pro Per

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN RE: The Adoption of ANDREW HYDE STEIN	FAMILY DIVISION
By: HAYAT STEIN Step-parent.	Case No. 86-42848 FC (16)
	CONSENT FOR ADOPTION
	FLA. BAR # 156481

KNOWN ALL MEN BY THESE PRESENTS:

That I, PATRICIA (CLARK) FOSTER, the undersigned mother of the infant known as ANDREW HYDE STEIN, born on the 25th day of March, 1987, in the City of Detroit, County of Wayne, State of Michigan, do hereby agree to relinquish all rights to and custody of said child to HAYAT STEIN, to be adopted by her as her legal heir at law and I waive all notice of and further consent to the adoption.

/s/ Patricia Clark Foster
PATRICIA (CLARK) FOSTER

Signed, sealed and delivered in the presence of:

/s/ Miriam Fein

/s/ Susan F. Morrison

STATE OF Michigan
COUNTY OF Oakland

SWORN TO AND SUBSCRIBED before me this 14th day of April, 1987.

/s/ Suzan Shell Onnill
NOTARY PUBLIC

My Commission Expires: 12/22/90

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN RE: The Adoption of ANDREW HYDE STEIN	FAMILY DIVISION
By: HAYAT STEIN Step-parent.	Case No. 86-42848 FC (16)
	CONSENT FOR ADOPTION
	FLA. BAR # 156481

KNOWN ALL MEN BY THESE PRESENTS:

That I, MICHAEL STEIN, the undersigned father of a male child known as ANDREW HYDE STEIN, born on the 25th day of March, 1987, in the City of Detroit, County of Wayne, State of Michigan, do hereby agree to allow my wife, HAYAT STEIN, to adopt ANDREW HYDE STEIN, not relinquishing any of my parental rights, duties and responsibilities toward this child, but so that together we can exercise permanent care, custody and control over ANDREW HYDE STEIN.

/s/ Michael Stein
MICHAEL STEIN

Signed, sealed and delivered
in the presence of:

/s/ Miriam Fein

/s/ Susan F. Morrison

STATE OF Michigan
COUNTY OF Oakland

SWORN TO AND SUBSCRIBED before me this 14th day of April, 1987.

/s/ Suzan Shell Onnill
NOTARY PUBLIC

My Commission Expires: 12/22/90

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN RE: The Adoption of ANDREW HYDE STEIN	FAMILY DIVISION
By: HAYAT STEIN Step-parent.	Case No. 86-42848 FC (16)
	PETITION FOR ADOPTION (Filed by mail 4/20/87)
	FLA. BAR # 156481

This is a Petition for Adoption in accordance with Florida Statute 63. The petition of HAYAT STEIN respectfully shows:

1. The minor sought to be adopted is a male infant of the Caucasian race who was born in Sinai Hospital, City of Detroit, County of Wayne, State of Michigan, on the 25th day of March, 1987.

2. The child's name is ANDREW HYDE STEIN.

3. The petitioner is named HAYAT STEIN, age 43. She resides with her husband, MICHAEL STEIN, the natural and biological father of said child.

4. The petitioner and her husband, MICHAEL STEIN, were married to each other on MAY 15, 1979 in DETROIT, MICHIGAN.

5. The petitioner has the facilities and the resources to provide for the health, care and welfare of said minor to be adopted.

6. The said minor to be adopted has no property of value at the time of the placement for adoption.

7. The petitioner desires to adopt the minor child. because she wishes to establish legally the parent-child relationship already existing between the parties and the minor child, and the petitioner has provided for the material wants of the minor child and is able to continue to do so in the future.

8. The written consents of the natural mother and natural father for the adoption of said minor child are attached hereto and made a part hereof. An Agreed Order Regarding Paternity, dated December 19, 1986, is also attached hereto and made a part hereof.

9. The subject infant has not been permanently committed to any child-placing agency.

10. This is a step-parent adoption.

WHEREFORE, the petitioner requests that a judgment of adoption of the subject infant be granted to her and that the child be known as ANDREW HYDE STEIN.

ROBERT M. JASINSKI
Attorney for Petitioner
The Roney Plaza
Mezz. Ste M-8
2301 Collins Avenue
Miami Beach, Florida 33139
Telephone (305) 538-4421

By Robert M. Jasinski
ROBERT M. JASINSKI

/s/ Hayat Stein
HAYAT STEIN

/s/ Michael Stein
MICHAEL STEIN

SWORN TO AND SUBSCRIBED before me this 14th day of April, 1987.

/s/ Suzan Shell Onnill
NOTARY PUBLIC

My Commission Expires: 12/22/90

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN RE: The Adoption of	:	FAMILY DIVISION
ANDREW HYDE STEIN	:	
By HAYAT STEIN, 364-50-6758, Step-parent.	:	CASE NO. 86-42848 FC (16)

FINAL JUDGMENT OF ADOPTION

THIS CAUSE having come before me on Final of Adoption, and the Court having heard testimony, and after reviewing the file, it is

ORDERED:

1. That the adoption of ANDREW HYDE STEIN by HAYAT STEIN, his step-parent, is hereby granted.

2. From the date of this order, ANDREW HYDE STEIN shall be the lawful son of HAYAT STEIN as if this child were the biological son of the petitioner.

3. HAYAT STEIN shall exercise with her husband and natural father of the child, MICHAEL STEIN, permanent care, custody and control of ANDREW HYDE STEIN.

4. All rights and obligations of the biological mother of ANDREW HYDE STEIN are hereby terminated by this order.

5. The Court finds that the consents of both natural parents are in proper form for purposes of this order.

DONE AND ORDERED in Chambers at Cutler Ridge, Dade County, Florida, this ___ day of May, 1987.

ACTING CIRCUIT
COURT JUDGE

Copies furnished to the parties.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

MICHAEL STEIN,	:	FAMILY DIVISION
Petitioner,	:	CASE NO. 86-42848 FC (16)
and	:	
PATRICIA (CLARK) FOSTER and BRENT FOSTER, her husband,	:	VERIFIED RESPONDENTS' MOTION FOR RELIEF FROM JUDGMENT AND MEMORANDUM OF LAW (FLA. BAR. NO. 279285)
Respondents.	:	

Respondents, PATRICIA (CLARK) FOSTER and BRENT FOSTER, file this Motion for Relief from "Agreed Order Regarding Paternity" and from "Final Judgment of Adoption", pursuant to Rule 1.540(b)(3) and (4), Florida Rules of Civil Procedure, and, as grounds therefor, state as follows:

1. On May 29, 1987, this Court entered a "Final Judgment of Adoption" permitting HAYAT STEIN to adopt a minor child, the natural son of Respondent, PATRICIA (CLARK) FOSTER. A true and correct copy of said Judgment is attached hereto as Exhibit 'A'.

2. This Court had previously entered on "Agreed Order Regarding Paternity", on December 19, 1986, upon the "Petition for Declaratory Relief Relevant to Adoption and for Supplemental Relief", filed by Petitioner, MICHAEL STEIN, through his attorney, Alan S. Kessler, Esq. Copies of the Order and Petition are attached hereto as Exhibit 'B' and 'C', respectively.

3. Subsequent to the entry of "Agreed Order Regarding Paternity", HAYAT STEIN, through her attorney, Robert M. Jasinski, Esq., filed a "Petition for Adoption" of the infant. A true and correct copy of said Petition is attached hereto as Exhibit 'D'.

4. Attached to said Petition was a "Consent for Adoption", alleged to be signed by PATRICIA (CLARK) FOSTER, the natural mother. Although it appears that PATRICIA (CLARK) FOSTER's signature was affixed to the "Consent", the acknowledgment is false as PATRICIA (CLARK) FOSTER never signed any document in the presence of the notary or the two (2) witnesses.

5. At the time this action was filed, the Petitioner was a Michigan resident and the Respondents were Michigan residents who were never served with process in connection with this proceeding. Moreover, at the time the proceeding was commenced, the child, who is the subject of this paternity and adoption action, was not born.

6. The subject child was born on March 25, 1987, in the State of Michigan. At no time during the pendency of these proceedings was the infant within the territorial jurisdiction of this Court. Moreover, at no time did this Court appoint a Guardian Ad Litem to act for said child.

7. Attached hereto as Composite Exhibit 'E' are true and correct copies of Administrative Orders numbers 86-149; 86-150; 86-151; 86-152; and 86-153. 86-149 deals with cases emanating from the Family Civil Department; 86-150 deals with General Jurisdiction Division cases and the disposition of counterclaims filed in civil actions ending in Circuit Court, exceeding the jurisdiction of the

County Court; 86-151 deals with simplified dissolution of marriage cases emanating from the Family Civil Department; 86-152 deals with paternity cases *filed* by the State Attorney's Office; and 86-153 deals with cases emanating from the Criminal Division. None of these Administrative Orders authorize a County Court Judge, such as Edward Swanko, to hear and determine a declaratory action concerning paternity as in the instant case. In view of this, Respondents respectfully submit that Honorable Edward Swanko was without jurisdiction to enter the "Agreed Order Regarding Paternity" he did in the above proceeding as an "Acting Circuit Judge", since he was not authorized, under any administrative order, to hear and consider the instant action for declaratory relief. Sitting County Court Judges are not authorized to hear actions for declaratory relief, since those actions, pursuant to Chapter 86, Florida Statutes, are to be brought in Circuit Court. In view of the Administrative Orders in force during the period of December 1-31, 1986 (copies of which are attached), County Court Judges, and specifically the Honorable Edward Swanko, are not authorized in any fashion to consider the instant action absent an order appointing him. A review of the Court docket reveals that such an order is conspicuously absent. Therefore, the "Agreed Order Regarding Paternity" is void. Similarly, the "Final Judgment of Adoption" is void. Attached hereto as Exhibit 'F' are Administrative Orders numbers 87-59; 87-60; 87-61; 87-62; 87-63; and 87-64 which were in force during the period of May 1-31, 1987. 87-59, 87-60, 87-61, 87-63 and 87-64 deal with the same matters as 86-149, 86-150, 86-151, 86-152 and 86-153, respectively.

(87-62 deals with five (5) county court judges, not including Judge Edward Swanko, who were temporarily assigned as Acting Circuit Court Judges in the General Jurisdiction Division.) With the exception of Order No. 87-59, none of these Administrative Orders authorizes a County Court Judge to hear an "uncontested adoption", and enter a "Final Judgment of Adoption". 87-59 assigns several county court judges, including Judge Edward Swanko, to temporarily serve as:

> "Acting and Temporary Judges of the FAMILY CIVIL DEPARTMENT of the FAMILY DIVISION of the Circuit Court, to hear, try, conduct, determine and dispose of these cases assigned to them by the Associate Administrative Judge of the Family Division of the Circuit Court, effective May 1, 1987, through and inclusive of May 31, 1987, and thereafter dispose of all those matters considered by them during said period."

A review of the Court docket fails to show an Order from the Associate Administrative Judge of the Family Division appointing Judge Edward Swanko to hear this matter.

8. Notwithstanding the above, the "Final Judgment of Adoption" is also void.

9. Respondent, PATRICIA (CLARK) FOSTER, had an initial contact with Noel P. Keane, Esq., an attorney in Michigan, prior to signing the Surrogate Parenting Agreement ('Agreement'), a copy of which is attached hereto as Exhibit 'G'.

10. On page 6 of the Agreement, Noel P. Keane, signed the document as "Attorney for Natural Father". On Page 7 of the Agreement, Herbert A. Brail signed as

"Attorney for Surrogate and her Husband". In addition, page 21 of the Agreement, titled "Acknowledgment of Independent Counsel", was signed by Herbert A. Brail, as the Respondents' "independent" counsel. Respondents at all times believed that they were being represented by independent counsel, when, in fact, as indicated in a letter dated August 29, 1986, from the law offices of Noel P. Keane, P.C., to PATRICIA (CLARK) FOSTER, Herbert A. Brail was an attorney in Mr. Keane's law firm. A copy of said letter is attached hereto as Exhibit 'H'.

11. In that same letter, it stated in part that "Mr. Kessler represents the couple in the Paternity Hearing and Mr. Jasinski will be representing your interests". Robert M. Jasinski, Esq., did in fact file a Notice of Appearance on behalf of the Respondents. Although Robert M. Jasinski was supposed to represent PATRICIA (CLARK) FOSTER's interests, at some time subsequent thereto he became counsel for the Petitioner, MICHAEL STEIN, in this action.

12. Based upon the fraud perpetrated by the Petitioner herein and through counsel and/or the Petitioner as well, and the collusion of counsel, the "Final Judgment of Adoption" and "Agreed Order Regarding Paternity" should be summarily vacated and set aside.

13. Respondents have retained the undersigned counsel and have agreed to pay them a reasonable fee for their services.

WHEREFORE, Respondents respectfully request this Court to enter an Order vacating the setting aside this Court's "Agreed Order Regarding Paternity" and "Final

Judgment of Adoption", and award Respondents a reasonable attorney's fee.

MEMORANDUM OF LAW

Respondents are clearly entitled to relief from the "Agreed Order Regarding Paternity" and "Final Judgment of Adoption" entered herein because the Court lacked the jurisdiction to enter same and because of the fraud and collusion which permeate said Orders.

Rule 1.540(b) Fla.R.Civ.P. provides in pertinent part:

> On motion and upon such terms as are just; the Court may relieve a party or his legal representative from a final judgment, decree, order or proceeding for the following reasons: . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment or decree is void; . . .

In the instant action, Judge Edward Swanko was without jurisdiction to enter the "Agreed Order Regarding Paternity", from which the "Final Judgment of Adoption" followed. In *Stern v. Whitehead*, Case No. 86-12060 (FC-24), Eleventh Judicial Circuit, a case factually identical to the instant case, Judge Philip Cook entered an "Order Granting Respondents' Motion for Relief from Judgment and Respondents' Supplemental Motion for Relief from Judgment" (Exhibit 'I'), dated September 4, 1986, vacating and setting aside the Court's "Agreed Order Regarding Paternity" procured by Alan S. Kessler, Esq., attorney for Petitioner, in concert with Robert M. Jasinski, Esq., as "Attorney for Respondents". Respondents are entitled to relief pursuant to Rule 1.540(b)(4).

Additionally, The Petitioner's fraud is clearly the type of intrinsic fraud which may be addressed by the Court by granting relief from the judgment if the motion for relief from the judgment is made within one (1) year of the judgment. *DeClaire v. Yohanan*, 453 So.2d 375 (Fla. 1984):

> Under Rule 1.540(b) as it is presently written, a party may, by motion, seek to set aside a final judgment, decree, order or proceeding on numerous grounds not previously available, including instrinsic fraud. Where the basis of the motion is mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, intrinsic or extrinsic fraud, misrepresentation, or misconduct of an adverse party, such motion must be made within a reasonable time and in no event more than one (1) year from the entry of the final judgment. Id. at 378. (Emphasis added).

In *DeClaire*, supra, the Supreme Court of Florida explained that intrinsic fraud is fraudulent conduct which arises within a proceeding, relating to the issues tried and includes false testimony given in a proceeding. The Court there denied the Wife's Motion for Relief from the Judgment based on fraud on the Court filed three (3) years after the judgment because the Wife complained of intrinsic fraud and, therefore, the motion had to be filed within one (1) year of the Judgment.

Where within one (1) year from the judgment a former partner filed a motion for relief from a consent judgment procured by fraudulent representations, the Court held that the trial court's denial of the motion without holding an evidentiary hearing was error and remanded for hearings to determine whether or not there

was fraud or misrepresentation which would justify vacating the final judgment. *Rosenthal v. Ford,* 443 So.2d 1077 (Fla. 2d DCA 1984). The Court in *Streater v. Stamper,* 466 So.2d 397 (Fla. 1st DCA 1985), reversed the trial court's granting of an untimely 1.540(b) motion noting that allegations that the judgment had been procured by fraud, misrepresentation and perjury were "an assertion of intrinsic fraud and it is thus subject to the one year limitation period provided by Rule 1.540(b)".

In *Alexander v. First National Bank of Titusville,* 275 So.2d 272 (Fla. 4th DCA 1973), the trial court struck a counterclaim alleging that in a prior suit the plaintiff had misstated the amount of an indebtedness which resulted in fraud upon the Court. The appellate court affirmed upon a finding that it was inappropriate to bring an independent action to remedy this fraud:

> The 'fraud' to which the counterclaim speaks is in our view the type of fraud contemplated by subsection '(3)' of Rule 1.540(b), RCP, and should have been brought to the attention of the Court by a motion filed in the original action – not an independent action. Id at 274.

See also *Westcott v. Westcott,* 444 So.2d 495, 497 (Fla. 2d DCA 1984):

> In contrast, allegations of either intrinsic or extrinsic fraud may be sufficient grounds for a motion to set aside a judgment if the motion is made in the same lawsuit within one (1) year after entry of the judgment, pursuant to Rule 1.540(b).

In *Pelekis v. Florida Keys Boys Club,* 302 So.2d 447 (Fla. 3d DCA 1974), the defendant moved to vacate the judgment stating that it was procured by fraud and that

newly discovered evidence showed that a warranty deed to the plaintiff was actually two separate instruments which had been taped and one of the signatures forged. The Third District Court of Appeal on the interlocutory appeal reversed the trial court's denial of discovery in this matter and ordered the trial court to permit full discovery and to conduct an evidentiary hearing on the motion to vacate, noting that a motion to vacate based upon fraud is a serious charge which requires a full opportunity to present all available facts to the court.

In *Stella v. Stella,* 418 So.2d 1029 (Fla. 4th DCA 1982), the wife filed a motion for new trial which the court chose to treat as a 1.540(b) motion. She alleged that her husband misrepresented the value of his assets. The court, in reversing the court's denial of an evidentiary hearing, stated:

> "if proven this conduct would constitute the kind of fraud, misrepresentation, or other misconduct of an adverse party contemplated by the provisions of Rule 1.540(b)."

It is clear then that if a motion for relief of judgment is filed within a reasonable time and, at most, within a year from the final judgment, the Court may grant relief for intrinsic fraud such as perjury or other misrepresentation made during the proceedings.

Here, the Petitioner misrepresented to the Court that the Respondents have appeared voluntarily and that they have consented to the relief he has sought. By virtue of the fraud perpetrated on this Court and the misuse of this Court, the "Agreed Order Regarding Paternity" and the

"Final Judgment of Adoption" should be set aside. Petitioner and his counsel have wrongfully deceived and used this Court.

WHEREFORE, Respondents respectfully request the entry of an appropriate Order as set forth above, plus the award of reasonable attorney's fees and costs.

WE HEREBY CERTIFY that true and correct copies of the above and foregoing Verified Respondents' Motion for Relief from Judgment and Memorandum of Law were furnished by mail this 15th day of April, 1988, to: MELVIN B. FRUMKES, ESQ., Frumkes & Greene, P.A., 100 North Biscayne Boulevard, Suite 1607, Miami, Florida 33132; NOEL P. KEANE, ESQ., 930 Mason, Dearborn, Michigan 48124; ROBERT M. JASINSKI, ESQ., Roney Plaza, Suite M-8, 2301 Collins Avenue, Miami Beach, Florida 33139; DEPARTMENT OF HEALTH & REHABILITATIVE SERVICES, Adoption Division, 1150 Southwest 1st Street, Miami, Florida 33130; and, MICHAEL STEIN, Petitioner, 1986 Meadow Court, Bloomfield Hills, Michigan 48033.

BUCHBINDER & ELEGANT, P.A.
Attorneys for Respondents
Commonwealth Bldg., 4th Flr.
46 Southwest First Street
Miami, Florida 33130
(305) 358-1515

By: /s/ Ira M. Elegant
IRA M. ELEGANT

By: /s/ Allan Jay Atlas
ALLAN JAY ATLAS

/s/ Patricia (Clark) Foster
PATRICIA (CLARK) FOSTER

/s/ Brent Foster
BRENT FOSTER

STATE OF MICHIGAN) ss.
:
COUNTY OF MONROE)

BEFORE ME, the undersigned authority, personally appeared PATRICIA (CLARK) FOSTER and BRENT FOSTER, her husband, the Respondents in the above action, each of whom, after being duly cautioned and sworn, acknowledged that she and he has read the foregoing "Verified Respondents' Motion for Relief from Judgment and Memorandum of Law" and that the same is true and correct.

WITNESS my hand and official seal in the County and State last aforesaid this 15th day of April, 1988.

Illegible
NOTARY PUBLIC,
State of Michigan

My Commission Expires: May 21, 1990

(NOTARY SEAL)

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

MICHAEL STEIN,

Petitioner,

and

PATRICIA (CLARK) FOSTER and BRENT FOSTER, her husband,

Respondents.

_____/

FAMILY DIVISION

CASE NO. 86-42848
FC (16)

RE-NOTICE OF HEARING
(Special Appointment)

FDI 096760

NOEL P. KEANE, ESQ.
930 Mason
Dearborn, MI 48124

DEPARTMENT OF HEALTH & REHABILITATIVE SERVICES
Adoption Division
1150 S.W. 1st St.
Miami, FL 33130

TO:

MELVYN B. FRUMKES, ESQ.
Frumkes & Greene, P.A.
100 N. Biscayne Blvd., #1607
Miami, FL 33132

ROBERT M. JASINSKI, ESQ.
2301 Collins Avenue
Roney Plaza, Suite M-8
Miami Beach, FL 33139

YOU ARE HEREBY NOTIFIED that the undersigned has scheduled "Verified Respondents' Motion for Relief from Judgment" for hearing before the Honorable EDWARD SWANKO, Judge of the above-styled Court, in Chambers, at the Cutler Ridge Branch Courthouse located at 10710 S.W. 211 Street, Miami, Florida, on Wednesday, the 1st day of June, 1988, at 8:15 o'clock in the A.M.

PLEASE BE GOVERNED ACCORDINGLY.

IT IS HEREBY CERTIFIED that a copy of the foregoing has been furnished, by mail, to the above addresses, this 9th day of May 1988.

BUCHBINDER & ELEGANT, P.A.
Attorneys for Respondents
46 S.W. First St., 4th Fl.
Miami, Florida 33130
(305) 358-1515

By:/s/ Ira M. Elegant
Ira M. Elegant

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 86-42848 FC (16)

MICHAEL STEIN, Petitioner, and PATRICIA (CLARK) FOSTER and BRENT FOSTER, her husband, Respondents.	NOTICE OF HEARING (Fla. Bar No. 279285)

TO:

MELVYN B. FRUMKES, ESQ.
Frumkes & Greene, P.A.
100 N. Biscayne Boulevard
Suite 1607
Miami, FL 33132

DEPARTMENT OF HEALTH & REHABILITATIVE SERVICES
Adoption Division
1150 S.W. 1st Street
Miami, FL 33130

NOEL P. KEANE, ESQ.
930 Mason
Dearborn, MI 48124

ROBERT M. JASINSKI, ESQ.
2301 Collins Avenue
Roney Plaza,
Suite M-8
Miami Beach, FL 33139

MICHAEL STEIN
1986 Meadow Court
Bloomfield Hills,
MI 48033

YOU ARE HEREBY NOTIFIED that the undersigned has scheduled the **Verified Respondents' Motion for Relief from Judgment** for hearing before the Honorable EDWARD SWANKO, Judge of the above-styled Court, in Chambers, at the Cutler Ridge Branch Courthouse

located at 10710 S.W. 211 Street, Miami, Florida, on Friday, the 29th day of April, 1988, at 8:30 o'clock in the A.M.

PLEASE BE GOVERNED ACCORDINGLY.

WE HEREBY CERTIFY that true and correct copies of the above and foregoing Notice of Hearing were furnished by U.S. mail to the above addresses this 15th day of April, 1988.

BUCHBINDER & ELEGANT, P.A.
Attorneys for Respondents
Commonwealth Bldg., 4th Floor
46 Southwest First Street
Miami, Florida 33130
(305) 358-1515

By:/s/ Allan Jay Atlas
ALLAN JAY ATLAS